



Brenda Allen, Director

**Office of Purchasing and Supply Services**  
**Facilities Administration Building (FAB)**  
**13300 Old Marlboro Pike, Room 20**  
**Upper Marlboro, MD 20772**  
**301-952-6560 Fax: 301-952-6605**  
[www1.pgcps.org](http://www1.pgcps.org)

**NOTICE OF CONTRACT AWARD**

June 30, 2015

Northwest Evaluation Association  
Attn: Geri Cohen  
121 NW Everett Street  
Portland, OR 97209  
Ph: (503) 624-1951  
Fax: (503) 639-7873  
Email: [sherry.desimone@nwea.org](mailto:sherry.desimone@nwea.org)

Karen Johnson  
Ph: (301) 952-6592  
Fax: (301) 952-6605  
[karen4.johnson@pgcps.org](mailto:karen4.johnson@pgcps.org)

Contact: Geri Cohen

SUBJECT: RFP 050-15 Research Based Online Computer Adaptive Assessments

Northwest Evaluation Association has been selected as the vendor to provide services in accordance with the above-mentioned RFP. This contract sets-forth the terms and conditions and is provided for your review and acceptance. Any changes or additions made by your company must first be accepted by the Purchasing Division before the contract is valid.

The intent of this contract is to provide the Board with an expedited means of procuring supplies and/or services at the lowest cost. This contract is for the convenience of the Board and is considered by Purchasing Department to be a "Non-Exclusive" use contract. The Board does not guarantee any usage. The Board will not be held to purchase any particular Brand, in any groups, prices or discount ranges, but reserves the right to purchase any item/items listed in the price schedule submitted.

Until the contract is signed by Northwest Evaluation Association and the BOARD, authorization for commence to service sites on behalf of the contract is forbidden. Please sign below and return all documents to the PURCHASING OFFICE within fifteen (15) days. Failure to sign the contract award and return all required documents within the specified time, shall rule your offer null and void and, therefore, award shall be made to the next low responsive bidder.

This notice of award, bid documents terms and/or attachments and any conditions and instructions will constitute the entire contract after acceptance by your firm and the BOARD. Please refer to the bid for all applicable terms and conditions.

**CONTRACT AWARD ESTIMATED AMOUNT**

The estimated amount of award is \$ 1,263,200.00

**INITIAL CONTRACT TERM**

The initial term of the contract will be from July 1, 2015 – June 30, 2018. The initial term of the contract will be for three (3) years from date of award. Prices shall remain firm for this contract. **All prices must be submitted per F.O.B. destination only unless otherwise specified herein.**

**THIS NOTICE OF AWARD IS NOT AN ORDER TO COMMENCE SERVICE/WORK OR TO MAKE DELIVERIES** at this time. Commence service/work/deliveries only after receipt of a purchase order(s) signed by the Purchasing Agent.

**INSURANCE**

Certificate of Insurance, made in favor of the **BOARD OF EDUCATION OF PRINCE GEORGE'S COUNTY, UPPER MARLBORO, MARYLAND 20772-9983**, must be submitted to the PURCHASING OFFICE with the returned signed contract award **WITHIN FIFTEEN (15) DAYS**. The Certificate should reference the BID NUMBER as shown herein. It will be the responsibility of the contractor to ensure that a current Certificate of Insurance is on file in the Purchasing Office during the entire period of the contract.

**PERFORMANCE/PAYMENT BOND**

**When required** the successful Respondents shall submit a performance or payment bond, Cashier's or Certified Check in the amount of one hundred percent (100%) as determined by the BOARD and specified in the IFB, of all phases of the contract to ensure the satisfactory completion of the work for which a contract or purchase order is awarded that exceed \$100K. (Comar 21.06.07.03) The Board reserves the right to request performance bond for amount under or over \$1000.00. The performance bond shall be submitted with the return of the signed contract award **WITHIN FIFTEEN (15) DAYS**. The parties agree no bond is required.

The bond, cashier's or certified check must be made in favor of the **BOARD OF EDUCATION OF PRINCE GEORGE'S COUNTY, UPPER MARLBORO, MARYLAND 20772-9983.**

**FINGERPRINT AND BACKGROUND CHECKS**

Pursuant to BOARD Administrative Procedure 4215, all Independent Contractors and Outsourced Agencies and their employees who will be on BOARD property and will or may have contact with students, **MUST** have a fingerprint and background check provided by the BOARD at the contractor's expense. The contractor will be responsible to call the Fingerprinting Office at 301-952-6775 to schedule an appointment.

**LIQUIDATED DAMAGES/FAILURE TO PERFORM WORK**

The successful respondents accepts this contract with the understanding that should they fail to complete the work in an acceptable manner and in the time stated, shall be subject to the payment of liquidated damages as stated in the proposal document. No liquidated damages are stated in the proposal, so the parties agree no liquidated damages are applicable to this Contract.

**TAXES**

Respondents shall assume full responsibility for payment of any and all taxes which may be construed by law authority as being due for materials and supplies under any contract with the BOARD OF EDUCATION OF PRINCE GEORGE'S COUNTY. They shall hold the BOARD OF EDUCATION OF PRINCE GEORGE'S COUNTY safe and harmless from any liability for said taxes.

Responses to the proposal submitted shall not include Federal Excise Taxes or State or Local Sales or Use Taxes (if applicable). The cost of any taxes (operational and/cost of doing business) that are lawfully due and paid by the contractor may be passed on to the Board of Education as part of the overall cost.

The BOARD OF EDUCATION OF PRINCE GEORGE'S COUNTY is subject to the provisions of Article 81, Section 326 (a) of the Annotated Code of Maryland which provides that the Retail Sales Tax shall not apply to the following Sales:

State Sales - "Sales to the State of Maryland or any of its political subdivisions. Provided that this sub-section shall not be construed or applied to exempt any sale, otherwise taxable under this subtitle, or tangible personal property to contractors or builders to be used for the construction, repair or alteration of real property, on contracts advertised for solicitation after July 1, 1968."

The Board of Education of Prince George's County Tax Exemption Certificate will be provided upon request.

#### **INSPECTION AND ACCEPTANCE**

Inspection and acceptance of materials or supplies will be made after delivery at specified destinations unless otherwise stated. The Board will bear the expense of inspection except for the value of samples used in case of rejection. Final inspection shall be conclusive except in regard to latent defects, fraud or such gross mistakes as to amount to fraud. Final inspection and acceptance or rejection of the materials or supplies will be made in a reasonable time, but failure to inspect and accept or reject materials or supplies shall not impose liability on the Board for such materials or supplies as are not in accordance with the specifications.

#### **CHANGES IN TERMS OR DELIVERY/COMPLETION DATE**

After award of individual contracts, any questions or correspondence related but not limited to the following matters must be directed to the PURCHASING OFFICE, BOARD OF EDUCATION OF PRINCE GEORGE'S COUNTY, UPPER MARLBORO, MARYLAND 20772-9983, in writing:

In the event of strikes, Acts of God, or other circumstances beyond the contractors control which prevent completion of work or delivery, the contractor must secure temporary contractual relief. The circumstances and duration must be stated by the contractor in writing and be forwarded to the PURCHASING OFFICE within ten (10) days after their development. Contractual relief shall be only that which is acceptable to and in agreement with the PURCHASING OFFICE, for those goods and services which are necessary for the day to day needs of the BOARD. **Please Note: ALL OVERTIME MUST BE APPROVED IN ADVANCE**

#### **INVOICES**

Invoices must be submitted in DUPLICATE, ACCOMPANIED BY A SIGNED DELIVERY TICKET, TO THE ACCOUNTS PAYABLE DEPARTMENT, BOARD OF EDUCATION OF PRINCE GEORGE'S COUNTY, 14201 SCHOOL LANE, ROOM 130, UPPER MARLBORO, MARYLAND 20772-9983, and contain the following minimal information:

- Purchase order number
- Request for Proposal number
- Delivery destinations as it appears on the purchase document
- Quantity, item number, and description of item billed
- Unit price and extended price of item
- Total amount of invoice
- Serial number of each item.

#### **GUARANTIES & WARRANTIES**

All guarantees and warranties required shall be furnished by the successful vendor and shall be delivered to the Purchasing department before final payment on the contract is made. Unless in conflict with this contract or as otherwise stated, manufacturer's standard warranty applies. NWEA's applicable warranty is set forth in the attached and incorporated NWEA Master Subscription Agreement.

#### **PAYMENT**

Payment will be made upon receipt of proper invoices. Payment shall be NET 30 days from date of receipt of invoice.

**DAMAGES OR INJURY**

Qualifying contractors will be held pecuniary responsible for any and all damage to BOARD property done or caused by them or their employees or other personnel engaged in the execution of the contract.

The contractor shall be similarly responsible for all injury to persons that occur as a result of his fault or negligence.

The contractor shall take proper safety and health precautions to protect the work, the workers, the public and the property of others.

The contractor shall be responsible for any and all damage to adjacent property incurred in the performance of the contract and shall hold the BOARD free of any and all claims for damages arising from the execution of the contract.

**TERMINATION FOR CONVENIENCE**

This contract may be terminated by the BOARD OF EDUCATION in accordance with this clause in whole or in part whenever the Board Contracting Officer shall determine that such a termination is in the best interest of the BOARD OF EDUCATION. Any such termination shall be effected by delivery to the Contractor at least five (5) working days prior to the termination date of a Notice of Termination specifying the extent to which performance shall be terminated and date upon such termination becomes effective. An equitable adjustment in the contract price shall be made for completed service, but no amount shall be allowed for anticipated profit on unperformed services.

**TERMINATION FOR DEFAULT**

The BOARD OF EDUCATION may, by written notice of default to the Contractor, terminate the whole or any part of the Contract in any one of the following circumstances:

If the Contractor fails to make delivery of the supplies or equipment exactly as specified or perform the services within the time and manner specified herein or any extension thereof, or If the Contractor fails to perform any of the other provisions of this Contract, or so fails to make progress as to endanger performance of this Contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of ten (10) days (or such longer period as the Purchasing Office may authorize in writing) after receipt of written notice from the Purchasing Office specifying such failure, or will fully attempt to make delivery of items other than the items in the Contract, or perform the services other than specified as to quality, contents of pack, work processes or otherwise, without specific authorization in the form of a contract amendment, or If a determination is made by the BOARD OF EDUCATION that the obtaining of the Contract was influenced by an employee of the BOARD having received a gratuity, or promise thereof, in any way or form.

**INFRINGEMENT OF PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET, OTHER INTEREST**

The following terms apply to any infringement, of claim or infringement, of any patent, trademark, copyright, trade secret or other proprietary interest based on the manufacture, normal use or sale of any material, equipment, programs or services furnished by Respondent to the Board, unless such infringement or claim results from the Respondent following written instruction or directions of The BOARD. Respondent shall indemnify the Board, for any loss, damage, expense, or liability that may result by reason of any such infringement or claim. Respondent shall defend or settle, at Respondent's own expense, any action or suit for which Respondent is responsible hereunder. The Board shall notify Respondent promptly of any claim or infringement for which Respondent is responsible and shall cooperate with Respondent in every way to facilitate the defense of any such claim.

**NON-DISCRIMINATION**

The Contractor is to conduct business in a non-discriminatory manner prohibiting discrimination in any manner against any employee or applicant for employment because of sex, race, creed, color, age, mental or physical disability, sexual orientation or national origin.

**RIGHT TO DATA** Except as set forth in NWEA Master Subscription Agreement, attached and incorporated into this Contract, All data, reports and other documents generated for the BOARD and accumulated by the consultant/contractor in the performance of this order/award, shall remain the property of the BOARD, and shall be returned to the control of the BOARD upon completion of the contract. No personal student or BOARD information, as defined by federal and state law and BOARD policy, shall be disclosed or published unless otherwise agreed herein.

**RIGHT TO AUDIT**

The contractor shall agree that in accordance with Section 952 of the Omnibus Budget Reconciliation Act of 1980, its contracts, books, documents and records will be made available to the Comptroller General of the United States and the BOARD until the expiration of services is finalized under this Agreement.

**AVAILABILITY OF FUNDS**

The contract shall be deemed executory only to the extent of appropriations available to the BOARD for the purchase of such articles. The obligation of the BOARD on all contracts, including those which envision funding through current and successive fiscal years, shall be contingent upon actual Board appropriations for the fiscal year(s) involved.

**RESTRICTIONS**

Potential contractors/vendors of the Board of Education of Prince George's County Schools are advised that Maryland law now provides the following mandatory restrictions on registered sex offenders performing work or services on school system property: "A person who enters into a contract with a county board of education or a nonpublic school may not knowingly employ an individual to work at a school if the individual is a registrant. A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding \$5,000 or both."

Persons or entities awarded contracts with the Board of Education of Prince George's County are required to certify that no employee, subcontractor, subcontractor employee, or material supplier that is a registered sex offender will be allowed to enter onto school system property at any time in the performance of the work or services for which the contract is awarded. Such certification is a condition precedent to any contract award, and failure to so certify will be grounds for not awarding a contract. It will be the responsibility of contractors to obtain similar certification from all sub-contractors and material suppliers performing work or services on school system property and to monitor adherence to this requirement. In the event that the Board of Education of Prince George's County determines that a registered sex offender has entered upon school system property in the performance of work for a contractor/vendor, such will be grounds for termination of the contract.

**LAWS AND PERMITS**

The contractor shall, without additional cost to the BOARD, be responsible for paying for and obtaining any necessary licenses, inspections and permits for complying with any and all FEDERAL, STATE AND LOCAL LAWS, CODES AND REGULATIONS, in connection with the performance of the work.

Laws of the STATE OF MARYLAND and PRINCE GEORGE'S COUNTY shall govern the contract.

The contractor may not assign or transfer this contract any interest herein or any claim hereunder, except as expressly authorized in writing by the Director.

No officer or employee of the Board of Education Prince George's County Public Schools, whether elected or appointed, has in any manner whatsoever, any interest in or has received prior hereto or will received subsequent hereto any benefit, monetary or material, or consideration from the profits or emoluments of this contract, job, work or service for the Board, and that no officer or employee has accepted or received or will receive in the future a service or thing of value, directly or indirectly, upon more favorable terms than those granted to the public generally, nor has any such officer or employee of the Board received or will receive, directly or indirectly, any part of any fee, commission or other compensation paid or payable to the Board in connection with this contract, job, work, or service for the Board, excepting, however, the receipt of dividends on corporation stock.

ACCEPTED BY:

FOR THE FIRM:

FOR THE BOARD OF EDUCATION:



SIGNATURE

10-12-2015  
DATE

Gerri Cohen

NAME

VP and CFO

TITLE

Northwest Evaluation Association

FIRM



SIGNATURE

10/14/15  
DATE

Brenda Allen

NAME:

Director, Purchasing & Supply Services

TITLE:

FOR THE BOARD OF EDUCATION  
OF PRINCE GEORGE'S COUNTY  
UPPER MARLBORO, MARYLAND 20772-998

## Contract Pricing

Product or Service	Year 1-Pilot Cost	Year 2 Cost	Year 3 Cost
<i>Number of licenses</i>	<i>12,600 students</i>	<i>80,000 students</i>	<i>80,000 students</i>
Reading and Language Usage Computer Adaptive Tests	\$ 88,200	\$ 560,000	\$ 560,000
Standard online reports and comprehensive data files	Included	Included	Included
Scoring and standard reporting	Included	Included	Included
Recommended Professional Development detailed in Table 2 of BAFO	\$ 55,000	Based on District's needs*	Based on District's needs*
Unlimited access to Destination PD online tutorials	Included	Included	Included
Support services described in Table 3 OF BAFO	Included	Included	Included
Ongoing Account Management	Included	Included	Included
<b>Total Cost per Year</b>	<b>\$ 143,200</b>	<b>\$ 560,000</b>	<b>\$ 560,000</b>
<p><i>*To be sure that we provide ongoing professional development that meets the needs of PGCPs, we would like to discuss district needs and goals in future years of contract. We may also wish to discuss Year 1 PD after contract to be sure we are effectively meeting the needs of the district.</i></p>			

**NWEA MASTER SUBSCRIPTION AGREEMENT**

**THIS MASTER SUBSCRIPTION AGREEMENT** (this “Subscription”) is entered into effective as of the last date set forth on the signature page (the “Effective Date”) by and between **NORTHWEST EVALUATION ASSOCIATION**, an Oregon nonprofit corporation (“NWEA”), and the school or school district or other subscribing entity on the signature page (“Subscriber”). The term “Subscriber” shall also refer to a school or group of schools forming an educational entity or any individual persons using or accessing the Services (as defined in Section 1 below) on behalf of the school or school district.

NWEA provides certain assessments, reporting, scoring, Software, professional development, and other services, (collectively, the “Services”). Specific Services agreed to by Subscriber will be set forth in one or more applicable order schedules or other order documents (collectively referred to herein as the (“Schedule(s)”). The parties further agree as follows:

1. **Subscription.** Subscriber affirms its subscription to the Services for the term specified in the Schedule(s) (the “Term”). Schedule(s) may be provided as a separate attachment to the same email that this Subscription is sent from<sup>1</sup>. In connection with this Subscription, NWEA will grant to Subscriber a limited license to use certain software (“Software”) that implement the delivery of the Services.

2. **Definition.** The Services include during the Term: (a) access to certain assessments set forth in the Schedule(s); (b) test items including, images, text, graphs, charts, pictures (“Content”); (c) professional development offerings set forth in the Schedules(s) (d) reports, Learning Continuum, and scoring (“Reporting”). Documentation is made available to Subscribers by NWEA (“Documentation”). The Software consists of (i) a lockdown browser sublicensed through NWEA from a third party that facilitates access to the Services; (ii) NWEA software that supports client server assessments and (iii) any other software set forth in the supplemental terms as applicable. Supplemental terms for these products and services may be found here <http://info.nwea.org/supplementalterms.html>.

3. **Grant of License.** NWEA hereby grants to Subscriber a nonexclusive, nontransferable license to access, use, display, and install or download a copy, as needed, of the Software for Subscriber’s internal use only to gain access to the Services during the Term. This Subscription extends only to the quantity of students indicated on Schedule(s). For MAP® assessments, this Subscription is limited to a maximum of three test events and one summer test administration for each student per academic year, except for MAP for Primary Grades Skills Checklist which can be administered without such calendar year limitation. In addition, there is no limitation on the number of administrations of Skills Pointer, Skills Navigator and/or Children’s Progress Academic Assessment per calendar year.

4. **Protection from Unauthorized Use or Access.** Subscriber shall not: (a) copy, distribute, reproduce, resell, publish, license, create derivative works, transfer, rent, lease, or sublicense any or all of the Services and Software; (b) exploit for any commercial purposes any portion of the Services and Software, in particular the Content and Reporting or permit use of the Services and Software by anyone not employed or in contract with Subscriber; (c) remove any proprietary notices or labels on the Services and Software; (d) use the Services and Software in an attempt to, or in conjunction with, any device, program, or service designed to circumvent technological measures employed to control access to, distribution of, or rights in, the Content or other work protected by the copyright laws of any jurisdiction. Subscriber shall use secure measures to prevent unauthorized use (e.g., copying test items) by their end users. Further, Subscriber shall reproduce all copyright, trademark, and other proprietary notices and legends on each copy, or partial copy, of the Services and Software. Subscriber will deactivate and remove from any equipment under its control any prior versions of Services.

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<sup>1</sup> If Subscriber is renewing through NWEA’s Online Account Renewal Process, Subscriber shall receive a confirmation page listing the Services renewed and Services added (if any) instead of a new Schedule. For the purposes of this Subscription, such confirmation page shall serve as Subscriber’s Schedule.

5. **Ownership.** The Services and Software are owned by NWEA and are copyrighted and offered through this Subscription to Subscriber, except certain Software is sublicensed from a NWEA supplier. All right, title, and interest in the Services and Documentation and all copies, and all updates, enhancements, modifications, and improvements, along with all associated intellectual property rights, remains with NWEA, giving rise to the intellectual property and despite any modifications or adaptations made for the benefit of Subscriber. The Service, Documentation, and all updates, enhancements, modifications, and improvements are protected by United States and international copyright laws and treaties, as well as other intellectual property laws. Subscriber is not granted any license to use any of NWEA's trade or service marks and NWEA retains all right, title, and interest in its trade and service marks. Subscriber shall allow NWEA to use, without restriction or royalty obligation, any comments, suggestions, or contributions provided by Subscriber with respect to the Services.

6. **Confidential Information.** Subscriber acknowledges that all Content, test scripts, underlying ideas, algorithms, item calibrations, concepts, procedures, processes, principles, know-how, and methods of operation that comprise the Services, including updates enhancements, modifications, and improvements are proprietary and confidential and contain trade secrets (collectively, "NWEA Confidential Information"), and Subscriber shall respect such confidentiality, and shall keep the Confidential Information strictly confidential. Subscriber shall not use, disclose, or distribute any Confidential Information, directly or indirectly, without the prior written consent of NWEA, except that NWEA authorizes Subscriber to disclose Confidential Information to Subscriber's employees or agents who have signed written confidentiality and nondisclosure agreements before such disclosure. Both NWEA and Subscriber acknowledge that this obligation survives the termination of this Subscription.

7. **Student Information.**

7.1 **Student Information Generally.** Subscriber shall have in place a policy to address student educational information ("Student Information") and the necessary parental and guardian consents for NWEA to provide Services to Subscriber under this Subscription. NWEA and Subscriber acknowledge that NWEA may have access to Subscriber's Student Information and Subscriber has obtained any necessary parental or guardian consent. NWEA shall respect such confidentiality and implement policies and practices to keep such information confidential. Except as permitted under this Subscription, NWEA shall not disclose any Student Information regarding Subscriber's students or their families that NWEA learns or obtains during the course of its performance under this Subscription without the written consent of Subscriber. Absent reckless or intentional acts or omissions by NWEA, in no event is NWEA liable for any disclosure of Student Information. Subscriber is solely responsible for configuring roles based access to Student Information within the Services and for ensuring the security and availability of Subscriber's own computers, computer networks, and internet connections, including security patches, choice of browser, and browser configuration settings to be used with the Services and Software, email, and other transmissions. Subscriber acknowledges that its designated Systems Administrator controls the access and security points of the Services and Software and may designate additional administrators with similar privileges. Subscriber grants permission to NWEA to transfer Student Information for the sole purpose of maintaining, supporting and troubleshooting the Services to its contractors that have executed confidentiality agreements.

7.2 **Subscriber's Ownership of Student Information.** Student Information (excluding Assessment Data as defined in Section 18) is and will remain the property of Subscriber and under Subscriber's control. NWEA may itself, through its own employees or its contractors, maintain and use Assessment Data to conduct assessment and research activities for the collective benefit of multiple Subscribers.

8. **FERPA.** NWEA shall maintain Student Information for and on behalf of Subscriber – in accordance with the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(a)(4)(A)(ii), 1232g(b)(1) for the primary purpose of providing assessment and research services pursuant to this Subscription, which may include longitudinal studies, alignment studies, norming studies. Personally identifiable information ("PII") derived from Student Information provided to NWEA may be disclosed only to NWEA employees or employees of contractors who have a legitimate educational interest in maintaining, organizing, or analyzing the data for uses authorized in this Subscription. Subscriber is responsible for any notices to parents required under FERPA and for providing parents and guardians with an opportunity to inspect and challenge the contents of the student records in question. If NWEA receives a request from a parent or

guardian challenging the content of student records maintained by NWEA, NWEA shall contact Subscriber to validate the identity of the parent or guardian and student and request instructions regarding corrective action to be taken, if any. Once validated, NWEA shall correct erroneous Student Information and associated educational records as directed by Subscriber in writing.

9. **Authorizations.** As part of this Subscription, Subscriber authorizes NWEA to perform the following actions:

9.1 **GRD Authorization.** NWEA may include Student Information in its secure Growth Research Database ("GRD") to provide Services to Subscriber. With inclusion of Student Information in the GRD, as part of the Services, Subscriber will have access to results of norming studies and alignment studies and the ability to order virtual comparison group and longitudinal reports, and other research reports from the GRD that may require nominal additional fees. NWEA will handle all such data in a manner that protects student anonymity.

9.2 **Duration of GRD Authorization.** The authorization for use of Student Information pursuant to this Subscription and for legitimate educational research is effective from the date when Subscriber first subscribed to the Services or commences use of the Services or Software, whichever is sooner. –As described in Section 18, NWEA will maintain Student Information derived under this Subscription, allowing Subscriber to continue to access Reporting and research services and to validate the authenticity of data in such Reporting generated prior to termination. NWEA will not use Student Information for commercial or advertising purposes.

9.3 **GRD Opt Out.** Should Subscriber decline to authorize PII in the GRD and upon receipt of Subscriber's request pursuant to this Section 9.3, NWEA will deidentify Student Information in the GRD and will not be able to offer Subscriber the ability to order virtual comparison group or longitudinal reports and other custom research reports due to the inability to accurately link student data. To elect this option, Subscriber must send an email to [legalservices@nwea.org](mailto:legalservices@nwea.org) with the following information: (i) your name, title and contact information; (ii) the name of your school or entity; (iii) request removal of PII from the GRD; and (iv) an acknowledgment that you are duly authorized and have legal capacity to execute this request for your respective party.

9.4 **Requests for Rediscovery of Student Information.** NWEA shall obtain prior written permission before disclosing a personally identifiable student information to any third party. From time to time, NWEA receives such requests from state educational agencies and their designated vendors to redisclose Student Information for evaluation, audit and educational purposes. After receipt of a state educational agency request, NWEA shall provide email notification to Subscriber, identifying the third party making such requests for redisclosure and identifying the nature of such redisclosure requests. Such notification to the Subscriber is also for the purposes of providing Subscriber an ability to create and maintain a record of the request or disclosure with the records of each student and providing the record to parents upon request, as required by 34 CFR 99.32. Subsequent to NWEA's email notification to Subscriber, NWEA reserves the right to promptly respond to such requests for redisclosures. Subscriber acknowledges and agrees that any such redisclosures of Student Information to the requesting state education agencies and their designated vendors are in accordance with and subject to the limitations set forth in 34 CFR 99.31 for redisclosures of Student Information without the prior written prior consent of parent or eligible student. Subscriber further acknowledges and agrees that any such redisclosures of Student Information to the requesting state education agencies and their designated vendors are in accordance with 34 CFR 99.35(a)(1) permitting certain authorized representatives access to Student Information in connection with the audit or evaluation of state supported educational programs or for enforcement or compliance purposes. Subscriber shall authorize NWEA to enter into any required Agreements with the third party organizations on its behalf as may be necessary under FERPA or its accompanying regulations to facilitate the redisclosure of Student Information, including but not limited to redisclosures under 34 CFR 99.35 (a)(2) and 34 CFR 99.31(a)(6)(i)(C).

10. **Subscriber Information.** Subscriber hereby permits NWEA to use information regarding its schools or district (other than PII) to perform its obligations hereunder and to include such information for research, to be used and disclosed to internal and external researchers that have executed confidentiality agreements. However, NWEA shall seek permission from Subscriber before including such information that is identifiable to the school or district in any publication..

11. **Privacy and Breach Notification.** Subject to the limitations of warranty set forth in Section 21 of the Subscription, , NWEA shall maintain the necessary and appropriate privacy and data security controls to secure Student

Information. NWEA shall maintain commercially reasonable policies and procedures for the designation and training of responsible staff members to ensure the security and confidentiality of Student Information. NWEA shall maintain an incident response program that specifies the actions to be taken when NWEA detects unauthorized acquisition or use of its information systems. As part of such response programs, NWEA shall notify the Subscriber by email or telephone without unreasonable delay, after confirmation of a breach of its security related to computer systems which contain Student Information. For the purposes of this Subscription, a breach means actual evidence of the unauthorized acquisition of or unauthorized use of Student Information ("Breach"). In the event of a Breach, Subscriber shall cooperate fully with NWEA to ensure NWEA can comply with any notification obligations NWEA may have to the affected parent(s), legal guardian(s) or eligible student(s) or any other parties for which notification by NWEA may be required under applicable law.

12. **Protection**. The Services may contain mechanical or electronic methods to prevent unauthorized use or distribution of the Services. Subscriber shall not disable or circumvent such control devices.

13. **Fees and Taxes**. Subscriber shall pay the Subscription fees set forth on the applicable Schedule during the Term and any renewal terms. Subscriber is solely responsible for any personal property taxes or local licensing fees resulting from Subscriber's agreement under this Subscription or in connection with NWEA's delivery of Services under this Subscription.

14. **Billing and Payment**. Subscriber shall use its best efforts to determine the number of students to be tested by Subscriber and the payments due. NWEA shall send an invoice based on the applicable Schedule to Subscriber, and Subscriber shall pay the amount due within 30 days of the invoice date by mailing a check or depositing the amount due via a wire transfer. Subscriber must contact NWEA at [accountsreceivable@nwea.org](mailto:accountsreceivable@nwea.org) for wire transfer instructions. If Subscriber overestimated the number of students tested, NWEA is not obligated to refund any Subscription fees. If, however, Subscriber tests more students than the number Subscriber originally estimated and paid for, NWEA may submit an amended invoice to capture the additional students, and Subscriber shall pay the variance within 30 days of the amended invoice date.

15. **Professional Development**. If Subscriber is new to the Services, Subscriber's teachers and staff administering the Services must participate in NWEA introductory product training before testing begins (e.g. MAP Admin Workshop if Subscriber subscribes to Web-based or Client Server MAP) and pricing is set forth in Schedule(s). Subscriber shall assign a member of its staff to coordinate the logistics of setting up the training before testing begins. If Subscriber experiences staff turnover that affects the administration of the Services, Subscriber shall notify NWEA within 30 days after the staffing change. NWEA may require Subscriber to send the new staff to introductory NWEA product training. NWEA recommends, but does not require, subsequent ongoing professional development workshops.

16. **Support**. NWEA will provide to Subscriber limited support, updates, enhancements, modifications, improvements, and maintenance services. If this Subscription is for Client Server MAP, Subscriber shall provide student and class information in a Class Roster File ("CRF") for each test window in the approved format as described in the CRF template. Subscriber shall submit the CRF during the time period that is posted on NWEA's website and before Subscriber's first day of testing. Subscriber acknowledges that the validity and accuracy of the Reporting depends upon the quality of the data rostered by Subscriber.

17. **Scheduled Maintenance**. NWEA has system maintenance periods throughout the year that will affect Subscriber's ability to upload or download student or test data, to access Reporting, or to interact with any of NWEA's websites. The ability to test during the scheduled maintenance periods shall not be affected for Client Server MAP Subscribers. NWEA will provide Subscriber with notice regarding regularly scheduled maintenance. Notwithstanding the foregoing, NWEA may perform emergency maintenance at any time without any advance notice to Subscriber.

18. **Limited Warranty**. NWEA warrants to Subscriber that the MAP assessment system, Skills Navigator, and/or Skills Pointer, and/or Children's Progress Academic Assessment (whichever assessment system is included in the applicable Schedule(s), defined as "Assessment System" for the purposes of this Section 21) when properly installed and used, will perform substantially as represented in the Documentation. The Assessment System may include open source software components. This limited warranty is void if the failure of the Assessment System results from (a) use of the

Assessment System in connection with software or hardware not compatible with the Assessment System or not meeting the technical specifications provided by NWEA; (b) improper or inadequate maintenance; or (c) accident, abuse, misapplication, or use by Subscriber of the Assessment System other than as described in the Documentation provided by NWEA. This limited warranty is void if the Assessment System is altered or modified in any way by anyone other than NWEA. NWEA does not warrant that the operation of the Assessment System meets Subscriber's requirements or will be uninterrupted or error free. Subscriber is responsible for the results obtained and decisions made from its use of the Assessment System. NWEA assumes no responsibility for the operating environment or for Subscriber's security programs in which the Assessment System functions. NWEA will, at its sole option, either replace or, with its commercially reasonable efforts, correct the Assessment System that fails to perform substantially in accordance with the Documentation for the Assessment System or as represented in writing by NWEA upon written notice of such failure. If NWEA is unable to correct the error after using commercially reasonable efforts, NWEA shall, at its sole option, either replace the Assessment System with a functionally equivalent software program or refund the fees paid for licensing the Assessment System on a prorated basis and cancel the license granted in this Subscription.

19. **Disclaimer.** EXCEPT FOR THE EXPRESS LIMITED WARRANTY PROVIDED IN SECTION 21, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES ARE PROVIDED "AS-IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, QUALITY, PRODUCTIVENESS OR CAPACITY, OR THAT THE OPERATION OF THE SOFTWARE INCLUDED WITHIN THE SERVICES SHALL BE ERROR-FREE. THERE IS NO WARRANTY FOR DATA SECURITY OR PERFORMANCE ISSUES (a) CAUSED BY FACTORS OUTSIDE OF NWEA'S REASONABLE CONTROL; OR (b) THAT RESULTED FROM ANY ACTION OR INACTION OF SUBSCRIBER OR SUBSCRIBER'S THIRD PARTIES.

20. **Disclaimer of Actions Caused by and/or Under the Control of Third Parties.** NWEA DOES NOT AND CANNOT CONTROL PERFORMANCE OF SERVICES BASED ON THE FLOW OF DATA TO OR FROM NWEA'S NETWORK AND OTHER PORTIONS OF THE INTERNET, WHICH DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT SUBSCRIBER'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). ALTHOUGH NWEA SHALL USE COMMERCIALY REASONABLE EFFORTS TO REMEDY AND AVOID SUCH EVENTS, NWEA CANNOT GUARANTEE THAT SUCH EVENTS SHALL NOT OCCUR. ACCORDINGLY, NWEA DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.

21. **Limitation.** THE REMEDIES PROVIDED UNDER THE LIMITED WARRANTY ARE SUBSCRIBER'S SOLE AND EXCLUSIVE REMEDIES. EXCEPT TO THE EXTENT THE FOLLOWING LIABILITY LIMITATION IS PROHIBITED BY APPLICABLE LAW, IN NO EVENT SHALL NWEA BE LIABLE FOR ANY DAMAGES OR EXPENSES WHATSOEVER, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOST OPPORTUNITY, LOST SAVINGS, LOSS OF GOODWILL, LOST BUSINESS, LOSS OF ANTICIPATED BENEFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OF OR DAMAGE TO DATA, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER DIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL DAMAGES, OR PECUNIARY LOSS, WHETHER BASED IN CONTRACT, TORT, OR OTHERWISE, ARISING OUT OF THE USE OF OR INABILITY TO USE THE SERVICES, EVEN IF NWEA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, NWEA'S ENTIRE LIABILITY UNDER THIS SUBSCRIPTION IS LIMITED TO THE AMOUNT ACTUALLY PAID BY SUBSCRIBER FOR THE RIGHT TO USE THE SERVICES IN THE TWELVE MONTHS PRECEDING THE INCIDENT GIVING RISE TO LIABILITY. THIS LIMITATION OF LIABILITY ALSO APPLIES TO THE SERVICES DEVELOPERS AND SUPPLIERS. IT IS THE MAXIMUM FOR WHICH THEY AND NWEA ARE COLLECTIVELY RESPONSIBLE.

21.1 **By NWEA.** Subject to Section 24, NWEA shall (i) defend Subscriber against any claims made by an unaffiliated third party that the Assessment System infringes its US patent, copyright, or trademark; and (ii) pay the amount of any resulting adverse final judgment against Subscriber (after any appeals) or settlement to which NWEA

consents. Subscriber must notify NWEA promptly in writing of the claim. . Subscriber agrees to provide NWEA with reasonable assistance in defending the claim. NWEA's obligations under this Section will not apply to the extent the claim (or adverse final judgment) is based on: (i) Subscriber using the Assessment System after NWEA has informed Subscriber to discontinue use due to such a claim; (ii) the combination or use of Assessment System with non-NWEA information, data, or materials (other than as contemplated under this Agreement); (iii) modification of the Assessment System other than as contemplated by this Agreement; or (iv) use of NWEA's trademark(s) without express written permission. If NWEA receives information about a claim under this Section related to the Assessment System, NWEA may do any of the following, at our expense and without obligation to do so: (i) procure the right to continue its use; (ii) replace it with a functional equivalent; (iii) modify it to make it non-infringing (if NWEA does this, Subscriber will stop using the allegedly infringing Assessment System immediately); or (iv) terminate this Agreement. Notwithstanding anything to the contrary, NWEA's commitment under this Section is Subscriber's exclusive remedy for third-party infringement and trade secret misappropriation claims. Nothing in this Section 25.2 obligates NWEA to indemnify Subscriber from and against any claims, suits, actions, losses, damages, liabilities, costs and expenses attributable to the acts or omissions of Subscriber, its officers, employees or agents.

22. **Miscellaneous.**

22.1 **Force Majeure.** Neither party is liable for any delay or failure to perform any obligation hereunder due to causes beyond its control, including without limitation, war, riot, insurrection, civil commotion, terrorist activity, fire, industrial disputes of whatever nature, acts of nature, computer crimes, epidemics, acts or omissions of third party vendors or suppliers, equipment failures, public enemies of government, failure of telecommunications, system malfunctions, fire, or other casualty.

22.2 **Waiver and Severability.** Waiver of any default or breach under this Subscription by NWEA does not constitute a waiver of any subsequent default or a modification of any other provisions of this Subscription. If any part of this Subscription is held invalid, illegal, in conflict with any law, or otherwise unenforceable by a court of competent jurisdiction, the parties intend that the remainder of this Subscription nevertheless remain in full force and effect.

22.3 **No Third Party Beneficiaries.** The parties do not intend to confer any right or remedy on any third party.

22.4 **Survival.** All provisions of this Subscription that would reasonably be expected to survive the termination of this Subscription do so.

22.5 **Entire Agreement; Order of Precedence.** This Subscription (including any applicable supplemental terms based on Subscriber's Services which are incorporated into this Subscription) contains the entire understanding of the parties regarding the subject matter of this Subscription and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Subscription. If there is a conflict among any of the terms of this Subscription, the parties intend that it be resolved by giving precedence to Subscription documents in the following order (i.e. the earlier listing governing the later): (i) any Supplemental terms relevant to Services Subscriber subscribes or subscribed to; (ii) this Subscription without any Schedules; (iii) the most recent Schedule; followed by (iv) any other Schedules in reverse chronological order.

22.6 **Assignment.** Neither party may assign this Subscription to any third party without the prior written consent of the other party, which shall not be unreasonably withheld.

22.7 **Binding.** This Subscription shall bind and inure to the benefit of the parties and their respective successors, and approved assigns, if any.

22.8 **Merger and Successors in Interest of NWEA.** In the event of a merger between NWEA and any third party, any such newly formed entity created as a result of such merger shall continue to maintain the Student Information and any PII subject to this Subscription provided the newly formed entity is subject to the terms and conditions as set forth under the Subscription. In the event of a sale of NWEA to any third party, any successor in interest

of NWEA shall continue to maintain the Student Information and any PII subject to this Subscription provided the successor in interest of NWEA is subject to the terms and conditions as set forth under the Subscription.

22.9 **Representation of Signatories.** Each person signing this Subscription represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Subscription for their respective party.

22.10 **Notices.** Any notice required under this Subscription shall be in writing and effective when (a) delivered personally against receipt, (b) deposited in the mail and registered or certified with return receipt requested, postage prepaid, (c) shipped by a recognized courier service and addressed to either party as designated in this Subscription, (d) delivered by email to an email address designated by the recipient, or (e) when delivered via any of the foregoing at such other address as may be provided by the recipient in accordance with this Section 26.10.

**Address for Notices to NWEA:**

Northwest Evaluation Association  
121 NW Everett Street  
Portland, OR 97209  
Email: [legalservices@nwea.org](mailto:legalservices@nwea.org)

**Address for Notices to Subscriber shall be sent to the address set forth in Subscriber's signature box below.**

22.11 **Counterparts.** This Subscription may be executed in counterparts, each of which shall be deemed an original, and the counterparts shall together constitute one and the same Subscription, notwithstanding that all of the parties are not signatory to a single original or the same counterpart. The parties may also deliver and accept facsimile or electronically scanned signatures, which shall be binding upon the parties as if the signature were an original.

22.12 **Vendor Status and Independent Contractor.** The Services is provided by NWEA within its normal business operations and is operated in a competitive environment. The Services offered under this Subscription constitutes a vendor relationship, as defined by OMB Circular A-133 and therefore, any monies to pay for this Subscription, are not subject to the federal audit requirements of OMB Circular A-133. NWEA is an independent contractor, and neither NWEA nor its employees, shall be deemed Subscriber's employees. Nothing contained in this Subscription shall create or imply an agency relationship, joint venture or partnership between the parties.